IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 55 of 2001
Old No. 1210 of 1993

1. Rankanatha Nayak s/o Narasingha Nayak
2. Surendra Nath Nayak s/o Narasingha Nayak
   Both resident of village-Bakilikan,
   P.O. Dengapandar, Via Burupada,
   P.S. Pattapur, Pin- 761 146,
   Distt. Gajam Orissa …….. Appellants.

Versus

1. New India Assurance Co. Ltd.
   Gulab Bhawan, Bahadur Saha Zafar Marg,
   New Delhi
3. Ram Lal Batra s/o Vazior Chand Batra,
   R/o 50 Adityananda Marg,
   Rishikesh (U.P. …… Respondents.

Sri N.S. Negi, learned counsel for the Appellants
Sri Tanveer Alam Khan, learned counsel for the insurance company.

Hon. P. C. Verma, A.C.J.
Hon. P.C. Pant, J.

The appellants have preferred this appeal against the judgment and order dated 07.09.1993 passed by Motor Accident Claims Tribunal, Chamoli in M. A. C. T. No. 4 of 1991, whereby the claim petition was allowed and the claimants were awarded Rs. 25,000/- (Rupees Twenty Five Thousand only) as compensation, which was to be paid by the opposite party no. 1 i.e. the New India Assurance Company with 12% interest form the date of petition till the date of actual payment.

Brief facts giving rise to the preset appeal are that on 18th September, 1990 at about 2 p.m., the deceased alongwith his wife and others was travelling form Hardwar to Badrinath Dham on pilgrimage. When the bus bearing no. UTS. 1091 reached near Raitoli about 4 ½ Kms. from the Rudraprayag on Srinagar-Rudraprayag road, it met with an accident and the deceased, who was the father of the claimants / appellants, died instantaneously. Accordingly to the claimants/appellants, the accident took place due to rash and negligent driving of the vehicle by its driver. Therefore, the claimants have filed claim petition before the M.A.C.T. Chamoli.

The opposite parties/respondents contested the case before the M.A.C.T. concerned and on the pleadings of the parties, the learned Motor Accident Claims Tribunal framed the following issues:

1. Whether the bus no. U.T.S. 1091 was being driven by its driver rashly and negligently at the time of the accident occurred on 18.09.1990 at 2 p.m. at Ratoli about 4 ½ Kilometers form Rudraprayag towards Rishikesh in the district Chamoli?
2. Whether the deceased wastravelling in the bus no. UTS 1091 involved in the accident.
3. Whether the bus no. UTS 1091 involved in the accident was overloaded as alleged by the defendant no.1 in the written statement and the defendant no.1 is not liable for the payment of compensation?
4. Whether the amount of compensation claimed is excessive. If so what extent the claimants are entitled for compensation?

In the learned lower Court, the claimants have examined P.W.1 Surendra Nath Nayak and P.W.2 Nitya Nand in support of their case and filed three papers per list 18-C1. The opposite parties did not lead any oral evidence but O.P. No.1 filed one paper per list 21-C1.

After recoding the evidence P.W.1 Surendra Nath Nayak and P.W.2 Nitya Nand, the learned Motor Accident Claims Tribunal, Chamoli held that the accident took place due to rash and negligent driving of the vehicle in question. Both the eye witnesses have clearly deposed that the driver of the bus was driving the vehicle negligently. During the course of the argument, it was alleged that the driver could not be examined as he died in the accident. In absence of the driver the conductor should have been examined who could be the best person to give the real account of the circumstances in which the accident took place. The learned Tribunal held that the principle of res ipsa loquitur applies it he present case. Since there was no rebuttal of the ocular testimony of the P.W.1 Surendra Nath Nayak and P.W.2 Nitya Nand, the learned Court below decided issue no.1 in favour of the claimants and against the opposite parties.

So far as the question whether the deceased was travelling in the bus in question is concerned, the learned Motor Accident Claims Tribunal has rightly held that since the dead body of the deceased was recovered by the police from the site of the accident, and there was no rebuttal of the same, therefore, it is proved that he was travelling in the bus in question.

With regard to amount of compensation to be paid to the claimants, the learned Tribunal held that the claimants were major sons of the deceased and as such they were not dependent on him. The deceased was aged about 50 years and considering the various judgments of the apex Court the learned Motor Accident Claims Tribunal held that the deceased has completed the average age. However, it warded Rs. 25,000/- to the claimants as per the then applicable laws. As the bus was insured with the New India Insurance Company, therefore, the learned Motor Accident Claims Tribunal held that the Insurance company is liable to pay the aforesaid amount of compensation.

We have heard learned counsel for the parties. We do not find any infirmity in the judgment of the Court below. The judgment under appeal is based on judicial appraisal of the evidence on record and is liable to be sustained. As such, the appeal deserves to be dismissed.

The appeal is accordingly dismissed.

(P. C. Verma, A. C. J.)

(P.C. Pant, J.)

Dt. 22.7.2004
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